

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL ELLWOOD SZLUHA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 73679

FILED

AUG 14 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Michael Ellwood Szluha appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Szluha argues the district court erred by denying his petition as procedurally barred. Szluha filed his petition on December 20, 2016, more than one year after issuance of the remittitur on direct appeal on December 8, 2015. *Szluha v. State*, Docket No. 65816 (Order of Affirmance, November 13, 2015). Thus, Szluha's petition was untimely filed. *See* NRS 34.726(1). Szluha's petition was procedurally barred absent a demonstration of good cause—cause for the delay and undue prejudice. *See id.*


Szluha argued he had cause for his delay because his postconviction counsel was the defense attorney in an unrelated death penalty case and the trial in that matter was ongoing on the due date for Szluha's petition. This claim failed to demonstrate an impediment external to the defense prevented Szluha from complying with the procedural time bar. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Szluha's claim amounted to a claim of ineffective assistance of postconviction counsel, but such claims cannot constitute cause for the

delay because the appointment of counsel was not statutorily or constitutionally required in this case. *See Brown v. McDaniel*, 130 Nev. 565, 571, 331 P.3d 867, 871-72 (2014); *Crump v. Warden*, 113 Nev. 293, 303, 934 P.2d 247, 253 (1997). Therefore, we conclude the district court did not err by denying Szluha's petition as procedurally barred.

Next, Szluha argues the district court erred by declining to conduct an evidentiary hearing concerning his underlying claims of ineffective assistance of counsel. However, the district court may deny substantive postconviction claims without conducting an evidentiary hearing concerning those claims when the petitioner cannot overcome the procedural bars. *Rubio v. State*, 124 Nev. 1032, 1046 & n.53, 194 P.3d 1224, 1233-34 & n.53 (2008). As Szluha did not demonstrate cause for his delay, the district court appropriately denied the petition without conducting an evidentiary hearing. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Silver


_____, J.
Gibbons

cc: Hon. Elissa F. Cadish, District Judge
Turco & Draskovich
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

¹The Honorable Jerome T. Tao did not participate in the decision in this matter.